

State of California



Fair Political Practices Commission

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July 10, 1985

Steven S. Wall
Professional Corporation
Luce, Forward, Hamilton & Scripps
The Bank of California Plaza
110 West A Street
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-85-151

Dear Mr. Wall:

You have asked whether Mr. T. M. Cromwell, Senior Vice President of Borax, has any potential conflict of interest if he testifies in a Public Utilities Commission hearing on behalf of Borax. Mr. Cromwell is a member of the California Mining and Geology Board.

The Political Reform Act prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he has a financial interest. Government Code Section 87100. Simply by testifying in a P.U.C. proceeding, Mr. Cromwell would not be making or participating in the P.U.C. decision. Furthermore, he would not be "using his official position to influence" the P.U.C. decision merely by testifying on behalf of Borax. That term only applies when a public official attempts to influence a decision of his own agency or another agency over which his agency has appointive or budgetary control, or when the official represents (or purports to represent) the position of his own agency before an unrelated agency. 2 Cal. Adm. Code Section 18700.1.

Since the Mining and Geology Board has no appointive or budgetary control over the P.U.C., and assuming that Mr. Cromwell would be testifying solely as a representative of Borax, and not as a representative of the Mining Board, his testimony before the P.U.C. would not involve any conflict of interest under the Political Reform Act.

Very truly yours,

A handwritten signature in cursive script, reading "Barbara A. Milman".
Barbara A. Milman
General Counsel

LUCE, FORWARD, HAMILTON & SCRIPPS

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STEVEN S. WALL
PROFESSIONAL CORPORATION
PARTNER

DIRECT DIAL NUMBER
(619) 699-2469

July 3, 1985

Barbara Milman, Esq.
General Counsel
California Fair Political Practices Commission
100 K Street
Sacramento, California 95814

Re: Potential Conflict of Interest; United States
Borax & Chemical Corporation; Testimony of
T. M. Cromwell

Dear Ms. Milman:

Earlier this week I spoke with Dan Stanford about the potential conflict of interest question raised by our client, United States Borax & Chemical Corporation, in connection with testimony that will be presented on its behalf to the Public Utilities Commission through Mr. T. M. Cromwell, the Senior Vice President of Borax. Dan suggested that I write you this letter confirming the nature of our questions and requesting a written opinion from you.

Mr. Cromwell will be testifying on behalf of U.S. Borax in certain hearings being conducted before the PUC's Administrative Law Judge in Case No. OII #84-04-079. Recently, however, Mr. Cromwell has been appointed by the Governor to serve as a member of the California Mining and Geology Board. In filling in his application for that position, Mr. Cromwell indicated that he occasionally testified before governmental agencies, such as the PUC, in connection with matters of importance to U.S. Borax.

The question we raise is whether or not there is any conflict of interest in Mr. Cromwell appearing and presenting testimony before the PUC. Dan Stanford has indicated that your analysis indicates that no such conflict exists. I would

LUCE, FORWARD, HAMILTON & SCRIPPS

Barbara Milman, Esq.
July 3, 1985
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appreciate your confirming this to me in a letter.

Thank you very much for your courtesy and cooperation.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Steven S. Wall". The signature is fluid and cursive, with the first name "Steven" and last name "Wall" clearly distinguishable.

Steven S. Wall
Professional Corporation
of
LUCE, FORWARD, HAMILTON & SCRIPPS

SSW:cb

cc: U.S. Borax
Atten: T. M. Cromwell

Dan Stanford